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Attorney for Defendants,

Robert G. Adamson III

XMLAuthor, Inc.

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH, NORTHERN DIVISION**

ZVI (HARRY) KURTZMAN, an individual,

Plaintiff,

vs.

ROBERT G. ADAMSON, III, an individual;
XMLAUTHOR, INC., a Delaware
Corporation,

Defendants.

**NOTICE OF REMOVAL PURSUANT TO
28 U.S.C. § 1441(c) - FEDERAL QUESTION**

REDACTED PORTIONS
FILED UNDER SEAL

Civil No. 2:14-cv-00486-BCW

Magistrate Judge Brooke C. Wells

Defendants, Robert G. Adamson III (“Mr. Adamson”) and XMLAuthor, Inc.

(“XMLAuthor”)(Mr. Adamson and XMLAuthor collectively sometimes referred to herein as

“Defendants”), by and through their undersigned counsel, hereby remove Case No. 140903647

from the Third Judicial District Court of the State of Utah to the United States District Court for

the District of Utah pursuant to 28 U.S.C. § 1331 and as grounds for removal state as follows.

I. STATEMENT OF THE CASE

1. On May 29, 2014, Plaintiff Zvi (Harry) Kurtzman (“Mr. Kurtzman”) filed a complaint in the Third Judicial District Court in and for Salt Lake County, Utah against Defendants Robert G. Adamson III (“Mr. Adamson”) and XMLAuthor, Inc. (“XMLAuthor”) for an alleged failure to assign U.S. Patent No. 8,522,127 (“the ‘127 Patent”) to Font Plaza Incorporated, said case being entitled *Zvi (Harry) Kurtzman v. Robert G. Adamson, III et al.*, Case No. 140903647 (the “Utah State Action”). A copy of the Complaint filed in the Utah State Action is attached herewith as Exhibit A. A copy of the Summons and Declaration of Service served on Mr. Adamson is attached herewith as Exhibit B. A copy of the Summons and Declaration of Service served on XMLAuthor is attached herewith as Exhibit C. Other documents filed in the State Action are attached herewith as Exhibit D.

2. The Summons and Complaint were personally served on Mr. Adamson on June 12, 2014.

3. The Summons and Complaint were served on XMLAuthor by USPS Priority Mail Restricted Delivery (Party’s signature required) and service received by XMLAuthor on June 16, 2014.

4. The Complaint purports to assert six causes of action including: (a) breach of contract, (b) unjust enrichment, (c) breach of implied covenant of good faith and fair dealing, (d) fraud, (e) civil conspiracy, and (f) defamation *per se*. At least five of the six causes of action appear to be based on an alleged failure to assign the ‘127 Patent.

5. Plaintiff purports to bring each of the claims on behalf of himself.

6. The relief Plaintiff seeks on behalf of himself includes judgment for damages against Defendants in an amount to be determined at trial, plus prejudgment interest, post judgment interest, costs and attorney fees to the maximum extent allowed by law.

II. FEDERAL QUESTION JURISDICTION UNDER 28 U.S.C. § 1331

7. Pursuant to 35 U.S.C. § 261:

Subject to the provisions of this title, *patents shall have the attributes of personal property.*

Applications for patent, patents, or *any interest therein, shall be assignable in law by an instrument in writing.* The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

(emphasis added)

8. Mr. Kurtzman's allegations of damages are founded on allegations regarding the issue of assignment of the '127 Patent. Indeed, he makes no less than thirteen allegations regarding alleged obligations of Mr. Adamson to assign the '127 Patent to Font Plaza Incorporated. See, e.g., Complaint, ¶¶ 13, 25-28, 39, 40, 43-44, 53, 66, 73, and 78.

9. Determination of rights under 35 U.S.C. § 261 will be required for Mr. Kurtzman to obtain the relief he seeks.

10. Also, 35 U.S.C. § 261's directive that patents be treated as personal property are likely to affect application of Statutes of Fraud relating to alleged contracts.

11. Furthermore, 35 U.S.C. § 261 will need to be interpreted to resolve the issues raised by Plaintiff in this action.

12. Accordingly, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because there is a federal question under 35 U.S.C. § 261.

III. ALL PROCEDURAL REQUIREMENTS HAVE BEEN SATISFIED

13. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all the process, pleadings, orders, and documents from the State Court Action which have been served upon Mr. Adamson or XML Author are being filed with this Notice of Removal. *See Exhibit A.*

14. This Notice of Removal has been filed within 30 days of the date that Mr. Adamson and XMLAuthor were served with the Summons and Complaint in this matter, or within 30 days of receipt, by service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. Removal is therefore timely in accordance with 28 U.S.C. § 1446 (b).

15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the U.S. District Court for the District of Utah is the federal jurisdiction embracing the Third Judicial District Court in and for Salt Lake County, Utah where the State Court Action was originally filed.

16.

IV. CONCLUSION

17. Accordingly, removal of the Utah State Action to this Court is proper pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. By this Notice of Removal, Robert G. Adamson III and XMLAuthor, Inc. do not waive any objections they may have as to service, jurisdiction, or venue, or any other defenses or objections they may have to this action.

Defendants intend no admission of fact, law, or liability by this Notice, and expressly reserve all defenses, motions, and/or pleas.

Dated: July 1, 2014

Respectfully submitted,

/s/ Perry S. Clegg

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Attorney for Defendants,

Robert G. Adamson III

XMLAuthor, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441(C) - FEDERAL QUESTION and EXHIBIT A thereto were served on Plaintiff by serving a copy on Plaintiff's counsel via U.S. mail on the 1st day of July, 2014, as follows:

Andrew G. Deiss
Deiss Law PC
10 West 100 South, Suite 700
Salt Lake City, Utah 84101

/s/ Perry S. Clegg

Perry S. Clegg